S.B. Civil Writ Petition No.6536/2003
Ashok Babel
vs
Liberty Stock Links Pvtd. Ltd., & Anr.

Date of order : 10.12.2007.

HON'BLE MR. PRAKASH TATIA, J.

Mr. JP Joshi, for the petitioner.
Mr.Rajesh Joshi,for the respondent.

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Heard learned counsel for the parties.

In this writ petition, the petitioner is aggrieved against the order of the trial court dated 2.2.2003 by which the petitioner's application filed under Order 6 Rule 16 was dismissed.

The only contention of the petitioner is that the para no.17 to 21 which is transcript of tape recorded conversation is in the form of evidence and the plaintiff has already annexed the transcript of the tape and the original tape alongwith the plaint. In view of the above detail of the transcript of the tape incorporated in para no.17 to 21 may embrass the defendant and defendant will have to file reply to each line and if the defendant will not file reply to each line of that transcript of tape recorded conversation, the defendant's case may be prejudiced because of drawing inference against the defendant of not denying the fact specifically. The trial court rejected the said application filed under Order 6

Rule 16 CPC and this Court passed interim order on 28th July, 2004 in the presence of both the parties, which is as under : -

> "The interim stay order dated 27.11.2003 is modified in the manner that petitioner/ defendant would not be insisted upon answering that part of the plaint which has been complained against in the written statement. The trial court, however shall proceed with the trial expeditiously."

After this interim order, it appears that written statement has been filed by the defendant, but defendant has not filed detailed reply to para no.17 to 21 of the plaint.

After filing written statement when case was fixed for evidence, the plaintiff submitted his affidavit containing all the narration recorded in the tape incorporating it in the affidavit then the defendant raised another objection about the admissibility of the said tape conversation, which has been incorporated in the affidavit of the plaintiff. At this stage, objection of the defendant is that when this Court already held that defendant cannot be insisted upon to answer the part of the plaint i.e., para no.17 to 21 then the plaintiff cannot lead evidence with respect to the pleadings referred in para nos.17 to 21. The defendant's

objection was dismissed by the trail court vide order dated 20.8.2007, hence, the petitioner preferred another writ petition, which was registered as SBCWP No.5762/2007 to challenge that order by which the petitioner's objection about the said evidence in the affidavit was rejected by the trail court.

Learned counsel for the petitioner submitted that the facts mentioned in the para no.17 to 21 are in the form of evidence whereas learned counsel for the respondent vehemently submitted that is necessary pleading as the petitioner relied upon the tape recorded conversation and, therefore, the petitioner incorporated this conversation in the plaint so that defendant may give appropriate reply to the tape recorded conversation.

Since this Court has already passed the interim order on 28th July, 2004 whereby this Court specifically directed that defendant shall not be insisted upon answering that part of the plaint which has been complained against in the written statement then in view of the fact that learned counsel for the petitioner submits that tape transcript has already been filed by the plaintiff, I do not think that now insisting upon reply to that part of the written statement i.e., para no.17 to 21 so as to revert back to the position of filing written statement to the facts mentioned in para no.17 to 21 particularly in

view of the fact that the tape and tape transcript is already part of the plaint as the tape has already been submitted by the plaintiff in court and has been taken on record. Therefore, no useful purpose will be served by making any other order.

In view of the above reasons, the written statement as submitted will not be treated to be admission of any fact mentioned in para no.17 to 21 and at the same time, the defendant shall not be entitled to raise objection about lack of pleading of plaintiff about incorporating the tape conversation in the plaint itself.

Hence, the writ petition of the petitioner is disposed of.

(PRAKASH TATIA), J.

c.p.goyal/-